

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

XUE-BAO CHEN,

Petitioner,

vs.

SUPERINTENDENT LAUER, *et al.*,

Respondents.

Case No. 2:14-cv-01711-APG-VCF

**ORDER**

This action is a *pro se* petition for a writ of habeas corpus filed by an inmate pursuant to 28 U.S.C. § 2254. This Court has conducted a preliminary review of the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The Court concludes that the petition in the instant action must be dismissed. The petition in the instant action challenges petitioner's continued confinement pursuant to a state court criminal judgment of conviction. Petitioner seeks an earlier release. Petitioner previously filed a habeas corpus petition in this Court challenging his continued confinement, filed under case number 2:12-cv-2162-JAD-NJK. In case number 2:12-cv-2162-JAD-NJK, petitioner has been appointed counsel, and an amended petition has been filed. (Dkt. #71). Case number 2:12-cv-2162-JAD-NJK is still pending and the Court has not yet ruled on the merits of the amended petition. Because petitioner is adequately represented by counsel in case number 2:12-cv-2162-JAD-NJK, the instant *pro se* petition is dismissed as duplicative.

1 District courts are required to rule on the certificate of appealability in the order disposing of  
2 a proceeding adversely to the petitioner or movant, rather than waiting for a notice of appeal and  
3 request for certificate of appealability to be filed. Rule 11(a). In order to proceed with any appeal,  
4 petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9<sup>th</sup>  
5 Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951 (9<sup>th</sup> Cir. 2006); *see also United States v.*  
6 *Mikels*, 236 F.3d 550, 551-52 (9<sup>th</sup> Cir. 2001). Generally, a petitioner must make “a substantial  
7 showing of the denial of a constitutional right” to warrant a certificate of appealability. *Id.*; 28  
8 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). “The petitioner must  
9 demonstrate that reasonable jurists would find the district court's assessment of the constitutional  
10 claims debatable or wrong.” *Id.* (quoting *Slack*, 529 U.S. at 484). In order to meet this threshold  
11 inquiry, the petitioner has the burden of demonstrating that the issues are debatable among jurists of  
12 reason; that a court could resolve the issues differently; or that the questions are adequate to deserve  
13 encouragement to proceed further. *Id.* In this case, no reasonable jurist would find this Court's  
14 dismissal of the petition debatable or wrong. The Court therefore denies petitioner a certificate of  
15 appealability.

16 **IT IS THEREFORE ORDERED** that this action is **DISMISSED WITH PREJUDICE** as  
17 duplicative of the petition filed in case number 2:12-cv-2162-JAD-NJK.

18 **IT IS FURTHER ORDERED** that petitioner is **DENIED A CERTIFICATE OF**  
19 **APPEALABILITY.**

20 **IT IS FURTHER ORDERED** that the Clerk **SHALL ENTER JUDGMENT** accordingly.

21 Dated this 17<sup>th</sup> day of October, 2014.

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23   
24 UNITED STATES DISTRICT JUDGE